

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAMONIE EARL, LINDA RUGG, ALESA
BECK, TIMOTHY BLAKEY, JR.,
STEPHANIE BLAKEY, MARISA
THOMPSON, MUHAMMAD MUDDASIR
KHAN, JOHN ROGERS, VALERIE
MORTZ-ROGERS, JAMES LAMORTE,
BRETT NOBLE, RUBEN CASTRO, FRITZ
RINGLING, LITAUN LEWIS, and LANCE
HOGUE, JR., each individually and on
behalf of all others similarly situated,

Civil Action No. 4:19-cv-00507

Plaintiffs,

V.

THE BOEING COMPANY and
SOUTHWEST AIRLINES CO.,

Defendants.

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
RELEVANT TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants The Boeing Company and Southwest Airlines Co. give notice of a recent decision by the Supreme Court of the United States.¹ In *TransUnion LLC v. Ramirez* (Ex. A), the Supreme Court reaffirmed that “[e]very class member must have Article III standing in order to recover individual damages” for asserted statutory violations. Ex. A at 15 (emphasis added). The Court also held that a jury verdict in a class action requires each class member’s standing to “be supported adequately by the evidence adduced *at trial.*” *Id.* (emphasis added).²

¹ This notification is unrelated to the Court’s order of June 29, 2021 (Dkt. 449), directing briefing on whether members of the putative American Airlines class have standing. Defendants will submit a consolidated brief on that issue at the time directed by the Court’s order.

² The Court did not resolve “the distinct question whether every class member must demonstrate standing *before* a court certifies a class.” Ex. A at 15 n.4. Boeing addressed that separate question in its briefing on class certification. See Dkt. 303 at 6–9; Dkt. 389 at 4–8.

TransUnion's holding that each class member's standing "must be supported adequately by the evidence adduced at trial," *id.* at 15, confirms that Plaintiffs' proposal to determine class members' standing during a post-trial claims administration is unconstitutional and inconsistent with Rule 23. Plaintiffs have attempted to overcome fatal standing defects by redefining the classes to include only the "bearer[s] of the ultimate economic burden" for each ticket purchase. Dkt. 357 at 67. That definition would require Plaintiffs to identify and eliminate the myriad point-of-sale purchasers who lack standing and, correspondingly, to identify through proof millions of ultimate reimbursing purchasers. But because Plaintiffs cannot prove who bore the "ultimate economic burden" of nearly 200 million individual ticket purchases through common evidence at trial, they propose to identify these individuals and entities *after trial* "once . . . a judgment is entered in Plaintiffs' favor" through "the claims-administration process." *Id.* at 8–9. Consistent with the arguments Defendants advanced in opposition to class certification, *TransUnion* forecloses that approach by requiring proof of standing "*at trial*." Ex. A at 15 (emphasis added).

Date: July 1, 2021

Respectfully submitted,

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Attorneys for Southwest Airlines Co.

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021, a true and correct copy of the above was served to counsel through the Eastern District of Texas's CM/ECF system.

/s/ Thomas M. Farrell
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